IN THE HIGH COURT OF DELHI

RSA No. 108/2002

Sh. Balwant Singh ..... Appellant
through: Mr. Kumar Sushobhan, Advocate

VERSUS

$ DDA ..... Respondent
through: Mr. Rajiv Bansal, Advocate
Ms. Surbhi Aggarwal, Advocate

RESERVED ON: 14.12.2007

% DATE OF DECISION: 17.12.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. The above captioned second appeal arises out of the judgment and decree dated 22.1.2002 passed by the learned Additional District Judge Delhi whereby the appeal filed by the respondent against the judgment and decree dated 16.7.1996 passed by the learned Civil Judge Delhi in favour of the appellant was allowed.

2. Appellant has filed a suit for specific performance against the respondent DDA. Material averments in the plaint were that vide allotment letter dated 30.9.1975 DDA allotted a residential

plot bearing Municipal No. K-1/154, Block-B, Shalimar Bagh, New Delhi in name of the appellant. That the entire sale consideration in sum of Rs.4,011/- was paid by the appellant. That vide letter dated 11.1.1988 respondent DDA returned the sale consideration paid by the appellant and informed him that the allotment of plot has been cancelled. That respondent DDA refused to execute the perpetual lease deed in respect of the plot and refused to hand over the possession of the plot.

3. Defence set up by the respondent was that the scheme under which appellant was allotted the said plot was a special scheme meant only for allottees of shops or plots in New Sabzi Mandi. That as per the scheme residential plot could be allotted to only those persons who were already allotted either a shop or a plot in New Sabzi Mandi. Thus allotment of a shop or a plot in New Sabzi Mandi was a pre-requisite for allotment of residential plot. That the appellant was allotted a shop in New Sabzi Mandi. That since appellant failed to pay the cost of construction the allotment of shop in New Sabzi Mandi was cancelled. That because allotment of the shop was cancelled, the allotment of the residential plot in his name was also cancelled. That the allotment of the plot was cancelled in the year 1978. That since the allotment itself was cancelled there was no occasion either to execute the perpetual lease deed of the plot in favour of the appellant or to hand over the possession of the plot to the appellant.

4. In support of his case appellant himself stepped into the

witness box as PW-1. Besides his testimony no other oral evidence was led by the appellant.

5. As regards documentary evidence 3 documents namely allotment letter dated 30.9.1975 Ex. PW-1/1, cheque dated 4.11.1987 in sum of Rs.4,011 Ex. PW-1/4 and a legal notice dated 1.11.1987 Ex.PW-1/2 issued by the counsel for the appellant and got served upon respondent DDA were proved by the appellant.

6. On behalf of the respondent DDA Mr. K.C.P.Ahluwalia, UDC, L & B (Residential), DDA were examined.

7. As regards documentary evidence respondent DDA filed following documents:-

i. Ex. DW-1/1 being the allotment letter dated 30.9.1975

ii. Ex. DW-1/2 being the terms and condition of the allotment of the residential plot.

iii. Ex. DW-1/3, Ex. DW-1/4 and Ex. DW-1/6 being official notings recording that the appellant has not made the payment of cost of construction of the shop allotted to him in New Sabzi Mandi and thus the allotment of the shop is cancelled. Notings also recommend that the allotment of the residential plot in name of the appellant be also cancelled. Ex. DW-1/4 also records that the commissioner, DDA has accepted the recommendation of the cancellation of the allotment of the residential plot.

iv. Ex. DW-1/5 being a letter dated 5.5.1978 issued by the respondent DDA and addressed to the appellant. The letter records that the sale consideration paid by the appellant is being returned.

v. Ex. DW-1/7 being a letter dated 11.1.1988 issued by the respondent DDA and addressed to the appellant. This letter is sent in reply to the legal notice dated 1.11.1987 sent by the appellant to the DDA.

8. After considering rival versions of the parties, the learned Trial Court has held as under:-

> "It is no where the case of the defendant in its WS or from the documents placed on record that the allotment of the residential plot (Plot in question) was subject to the existence/subsistence of the allotment of the shop in Subzi Mandi i.e. it has neither been pleaded in the W.S. nor does any of the documents support that the allotment of the residential plot was liable to be cancelled automatically in case of cancellation of the allotment of the shop in Sabzi Mandi."

9. On basis of aforenoted reasoning vide judgment and decree dated 16.7.1996 Trial Court has decreed the suit filed by the appellant.

10. Respondent DDA preferred an appeal before the court of Additional District Judge against the judgment and decree dated 16.7.1996 passed by the learned Trial Court.

11. As already noted, vide judgment and decree dated 22.1.2002 the Appellate Court allowed the appeal filed by the respondent and thus set aside the judgment and decree dated 16.7.1996 passed by the learned Trial Court.

12. In these circumstances following substantial question of law was framed for consideration:-

> "Whether on the evidence on record learned Appellate Court was justified in reversing the findings returned by the learned Trial Judge?"

13. In support of the appeal learned counsel for the appellant has urged following two grounds:-

i. That the learned Trial Court has rightly held that the issue pertaining to cancellation of the allotment of the residential plot on the basis of cancellation of the allotment of the shop in New Sabzi Mandi was not averred by the respondent in his pleadings.

ii. That the Appellate Court has not appreciated the testimony of DW-1 in correct perspective.

14. Since the first ground urged by the counsel for the appellant relates to pleading of the respondent it is necessary to set out the relevant portion of the written statement as also documents filed along with the written statement.

15. Para 4 of the written statement reads as under:-

> "4. In reply to para 4 of the plaint the issuance of the letter dated 17.5.76 is admitted. The receipt of the affidavit dated 27.5.76 is also admitted which was duly received on 29.5.76. It is <u>not out of place to mention here that the scheme for allotment of residential plot was on the basis of the shop/plots allotted in New Subzi Mandi, Azadpur</u>. Since the allotment already stands cancelled and the amount was refunded, therefore, question of execution of the lease deed or handing over the possession of the plot does not arise. Rest of the para is denied."

16. The above underlined portion shows that the respondent DDA laid a foundation in the written statement that allotment of a shop or plot in New Sabzi Mandi was a pre-requisite for allotment of a residential plot.

17. Relevant part of allotment letter Ex. DW-1/1 dated

30.9.1975 reads as under:-

> "Sub: Allotment of a residential plot to the allottee of shop/plot in New Subzimandi near Azadpur under a Special Scheme."

18. The said allotment letter dated 30.9.1975 was also filed by the appellant and exhibited as PW-1/1. This shows that the appellant was conscious of the fact that the allotment of a shop or plot in New Sabzi Mandi was a pre-requisite for allotment of a residential plot.

19. Relevant part of Ex. DW-1/2 reads as under:-

> "TERMS AND CONDITIONS
>
> For the sale by the Delhi Development Authority, New Delhi on behalf of the President of India, or the Perpetual Lease-hold rights in residential plots in Shalimar Bagh to the allottees of new Subzimandi in the LIG/MIG/HIG by draw of lots.
>
> 1. ELIGIBILITY:
>
> Any individual who is not a minor may apply for allotment of only one plot if he/she fulfills the following conditions:
>
> 1) The applicant should have been allotted shop/plot in the New Subzimandi by the DDA."

20. Relevant portion of Ex. DW-1/3 reads as under:-

> "L.S.O (R) may kindly see that the allottees of New Subzimandi Azadpur have been allotted residential plots in Shalimar Residential Scheme by him. The allotee/M/s./ Sh. Gopal Singh Balwant Singh has/have not made payment of cost of construction of the shop allotted to him/them in New Subzimandi Azadpur, as such the allotment of the shop has been cancelled by the competent Authority. You are, therefore, requested to cancel the allotment of residential plot also, if any, made to him/them by you in Shalimar Residential Scheme."

21. Relevant portion of Ex. DW-1/4 reads as under:-

> "As a matter of fact allotment of plots to these persons is totally linked up with allotment of shops in New Sabzi Mandi. We have been following it in all cases. This is also evident from the terms and conditions of allotment of plot appended with the application form.
>
> x x x x
>
> Commissioner (L) may kindly approve as proposed in the above note. Cancellation of allotment of plot has already been done in similar cases where allotment of shops has been cancelled."

22. A further perusal of Ex. DW-1/4 shows that the Commissioner (L) has accepted the recommendation that allotment of residential plot in name of appellant be cancelled.

23. Relevant portion of Ex. DW-1/6 reads as under:-

> "The allotment of residential plot is made on the basis of shop/plot allotted in New Sabzi Mandi. The allotment of shop/plot of New Sabzi Mandi has been cancelled by the E.O. (Impl.). We may also cancel the allotment of the residential plot and refund the earnest/premium in full as the allotment is being cancellation on the recommendation of E.O. (Impl.) and there is no breach of term in this case."

24. The stand taken by the respondent DDA has not found favour with the learned Trial Court for the following two reasons:-

i). That it was not pleaded by the respondent that the allotment of a shop or plot in New Sabzi Mandi was pre-requisite for allotment of a residential plot.

ii). That it was neither pleaded in the written statement nor does any of the document filed by the respondent support the stand of the respondent that the allotment of the residential plot was liable to be cancelled in case

of cancellation of allotment of shop in Sabzi Mandi.

25. The necessary foundation was laid down by the respondent in the written statement. Documents in relation thereto were filed. Parties led evidence to prove the same. Parties were conscious of the fact that allotment of a shop or plot in New Sabzi Mandi was a pre-requisite for allotment of residential plot. Even appellant was conscious of such fact as evidenced by the fact that he placed on record allotment letter dated Ex. PW-1/1. Further Ex. DW-1/4 and Ex. DW-1/6 clearly record that the allotment of shop or plot in New Sabzi Mandi and residential plot in Shalimar Bagh were interlinked.

26. Ex. DW-1/4 and Ex. DW-1/6 coupled with the testimony of DW-1 proves that the allotment of residential plot in name of the appellant was cancelled by the respondent DDA.

27. A contention was urged that DW-1 in his testimony has deposed that the allotment of shop in New Sabzi Mandi was subsequently restored in favour of the appellant. That after the restoration of the shop appellant is entitled for the restoration of the residential plot. Learned counsel for the appellant urged that while dealing with the appeal, the Appellate Court has not considered this portion of the testimony of DW-1.

28. A perusal of the judgment of the Appellate Court shows that Appellate Court has duly considered the said portion of the testimony of DW-1 and opined and in my opinion, rightly so, that the official witnesses often depose contrary to official records in order to

favour the opposite party.

29. No document has been placed on record by the appellant to establish that the allotment of the shop in New Sabzi Mandi was subsequently restored in his favour.

30. At the hearing counsel sought to show certain photocopies ostensibly evidencing that the allotment of the shop in Sabzi Mandi was subsequently restored in the favour of the appellant.

31. Said photocopies can not be considered by this court for the reason no application under Order XLI Rule 27 CPC for leading additional evidence has been filed by the appellant. No evidence in relation thereto has been led.

32. Lastly I note that the appellant has sought to project that for the first time in the year 1988 DDA informed him that the allotment of residential plot has been cancelled.

33. However, this stand of the appellant is belied by the letter dated 11.1.1988 issued by the respondent DDA in reply to the legal notice dated 1.11.1987 sent by the appellant.

34. Relevant portion of Ex. DW-1/7 reads as under:

> "With reference to your letter dated nil Advocate notice dated 1.11.87 on the subject cited above, I am directed to inform you that your request for the restoration of plot mentioned above has been considered & examined, but it is regretted that the same cannot be acceded to.
>
> Further, cheque No. 499770 dated 4.11.87 of Rs.4011/- deposited by you on account of premium of above said plot is also enclosed."

35. The letter dated 11.1.1988 Ex. DW-1/7 was admitted by the appellant. This shows that the appellant was aware of the fact that the allotment of the residential plot in his name has been cancelled prior to 1988.

36. In view of above discussion I hold that the respondent has duly proved that the allotment of the shop or plot in New Sabzi Mandi and residential plot in Shalimar Bagh were interlinked and that because of cancellation of allotment of shop in his name in New Sabzi Mandi, the allotment of residential plot in his name in Shalimar Bagh was also cancelled.

37. The substantial question is answered by holding that the on the evidence on record learned Appellate Court was justified in reversing the finding returned by the learned Trial Judge.

38. The appeal is dismissed.

39. No costs.

December 17, 2007 PRADEEP NANDRAJOG, J.
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